

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

WILLIAM J. POOLER
(MARGARET L. POOLER)

v.

OFFICE OF PERSONNEL MANAGEMENT

) DOCKET NUMBER
) PH08318410156
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Date: 10 SEP 1984

OPINION AND ORDER

Appellant, wife of the deceased civil service annuitant, has petitioned for review of the April 25, 1984, initial decision which affirmed the Office of Personnel Management's (OPM's) denial of her application to amend the decedent's annuity to provide her a survivor benefit. She maintains that the decedent's election of a life annuity (one not providing a survivor benefit) is invalid because the deceased was mentally incompetent when he made the election at the time of his disability retirement in September of 1980. For the reasons set forth below, we hereby GRANT the petition under 5 U.S.C. § 7701(e)(1).

OPM denied appellant's application to amend the decedent's annuity based on its findings that appellant failed to show that misinformation on the retirement application led the decedent to choose the life annuity and that appellant's submissions did not establish the decedent's mental incompetence at retirement. Official File, Tab 3. The presiding official, however, found that reliance on misinformation in the retirement form was the sole ground permitting modification of the decedent's annuity to provide a survivor benefit, and that appellant had not demonstrated

that the decedent's election was caused by such misinformation.^{1/} Initial Decision (I.D.) at 4-5.

We find that the presiding official's inquiry, solely into whether misinformation from OPM caused the election, was too limited. See Roebling v. Office of Personnel Management, MSPB Docket No. SF08318310986 at 2-3 (July 17, 1984) (the allegation that the decedent's mental health affected his annuity choice does not address the issue of whether OPM's information caused an undesired annuity election). Further, because an annuity providing a survivor benefit to the retiree's spouse is automatically paid absent the retiree's election to the contrary, see 5 U.S.C. § 8339(j) and 5 C.F.R. § 831.601, we find that such election is only valid when made by a mentally competent individual;^{2/} and that although such competency is presumed absent challenge, the spouse can demonstrate that the

^{1/} See Settlements in American Federation of Government Employees v. Devine, No. 81-2527 (D.D.C. April 16, 1982) (AFGE v. Devine I), and American Federation of Government Employees v. Devine (AFGE v. Devine II); and Cheeseman and Zagorny v. Office of Personnel Management, MSPB No. PH08318310675 (June 5, 1984) (appellant has the evidentiary burden of establishing that misinformation on the retirement form, as affected by subsequent OPM notifications, caused the choice of the annuity appellant now wishes to amend). We find no error in the presiding official's holding on the latter issue.

^{2/} Although not specifically provided by statute or regulation as a reason to permit amendment of an annuity, mental health is generally, under appropriate circumstances, a ground for voiding or modifying contracts. See 41 Am. Jur. 2nd, Incompetent Persons, § 65 at 603. Moreover, amendment of annuity selections is permitted in other contexts. See Cheeseman and Zagorny, v. OPM, supra, and cases cited therein (amendment due to OPM misinformation), and Landry v. OPM, 10 MSPB 358 (1982) (the one year limit to elect a reduced annuity in order to obtain a survivor benefit for a new spouse waived if employee was not aware of the right); Compare 5 U.S.C. § 831.501(c) (one year time limit to file for a disability retirement annuity waived for mental incompetence). Cf. Manzi v. United States, 198 Ct. Cl. 489, 492 (1972) (resignation from employment submitted by incompetent employee void because his illness precluded him from exercising free will or from understanding the transaction).

annuitant lacked the requisite capacity to make a valid election.^{3/}

In the instant case, although the presiding official made no specific finding regarding the decedent's mental competence at retirement, he adequately developed and considered the underlying facts so that we can resolve the issue. See Means v. Department of Transportation, CH075281F2369 at 4 (November 7, 1983) and cases cited therein (adequate development of the underlying facts permits the Board to apply the appropriate legal standard without need for remand).

As the presiding official noted, I.D. at 2-4, prior to his retirement in September 1980, and until his death in February of 1982, the decedent had a severe drinking problem. Both appellant and a long-time work acquaintance of the decedent testified that his drinking caused him to exhibit irrational behavior and poor judgment rising to the level of toxic psychosis. As evidence of the appellant's mental capacity, as early as June of 1980, the agency for which he worked refused his tendered resignation and instead assisted him in filing for disability retirement. His violent conduct and delusions led to his eviction from the family residence in the summer before his retirement. Moreover, the decedent retired only a week after his release from two months of hospitalization where he underwent serious gastrointestinal surgery, losing approximately 60 pounds during the two month period. His physician opined that he was unable to make a reasoned annuity choice given the short time between his release from the hospital and his retirement. Additionally, OPM's submissions, Official File,

^{3/} We are justified in placing this burden of the spouse because the spouse is the one seeking to change the annuity agreement of record to obtain a benefit and because the facts surrounding the annuitant's mental health are likely to be more accessible to the spouse. See Cheeseman and Zagorny v. OPM, supra, at 6-7, and cases cited therein.

Tab 3, do not reveal any attempts to confirm the election of the life annuity made on his retirement form or any notification to appellant concerning the decedent's choice.^{4/}

Thus, given the preponderant evidence of appellant's mental incapacity from retirement until his death, we conclude that his election of a life annuity cannot stand.


Accordingly, the initial decision is REVERSED. OPM is ORDERED to grant appellant's application for survivor benefits based on the retirement annuity of the decedent and submit proof of its compliance with this order to the Board's Office of Secretary within twenty (20) days of the date of this order. Any petition for enforcement of this order shall be made to the Board's Philadelphia Regional Office in accordance with 5 C.F.R § 1201.181(a).

This is the final decision of the Merit Systems Protection Board in this appeal. 5 U.S.C. § 1201.113(c).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

Washington, D.C.



Stephen E. Manrose
Acting Clerk

^{4/} We note, as the presiding official found, I.D. at 5-6, that such notification to appellant, as the decedent's spouse, was not mandated under the law applicable at his retirement.